

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

EDGAR ROSS, *et al.*,

Plaintiffs,

Case No. 4:06-cv-111

v

Hon. Wendell A. Miles

MICHAEL BAKER, *et al.*,

Defendants.

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ORDER ON PLAINTIFFS'  
MOTIONS FOR DEFAULT JUDGMENT

This is an action filed under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, and Sections 502 and 515 of the Employee Retirement Income Security Act, 29 U.S.C. §§ 1132, 1145. The plaintiffs allege that the defendants have breached their obligation to make fringe benefit and other contributions under the terms of a collective bargaining agreement. The defendants have defaulted. The matter is currently before the court on plaintiffs' motions for default judgment (docket nos. 5, 6, 7).

Fed.R.Civ.P. 55(b) provides that judgment by default may be entered by the Clerk as follows:

When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and is not an infant or incompetent person.

Plaintiffs have not tendered an affidavit stating the amount due or that the defendant is not an

infant or incompetent person. Plaintiffs have also not tendered an affidavit indicating that the defendant is not in military service. See 50 App. U.S.C. § 521(b)(1). Under the circumstances, the court **DENIES** the motion for default judgment **without prejudice**. Should plaintiffs refile their motion accompanied by the necessary affidavit, the court will give their request renewed consideration.

So ordered this 23rd day of October, 2006.

/s/ Wendell A. Miles  
Wendell A. Miles  
Senior U.S. District Judge